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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/291,227

04/13/1999

MICHAEL G. HAYEK

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03/11/2005

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

WANG, SHENGJUN

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/291,227

Applicant(s)

HAYEK, MICHAEL G.

Examiner

Shengjun Wang

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1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of applicants' amendments and remarks submitted December 6, 2004 is acknowledged.

Claim Rejections 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US Patent 5,937,790, of record).
3. Ito teaches a method of reducing stress in animals, including cats and dogs, by administering to the animals a composition comprising antioxidant selected from carotene and lutein etc. the antioxidant is in the concentration of about 0.02%. See, particularly, column 5, lines 16-20, 40-45, table 1 in column 8, and claims 15-16. Note, it is well known in the art that stress reduces the immunity. (see column 1, lines 23-26). Ito noted that domestic animals such as dogs and cats are inevitable subject to stress, because of the restricted living space (preventing from running off). See, column 1, lines 33-40.
4. Ito et al. does not teach expressly to choose lutein as the active ingredients, or particularly employ the lutein containing feed for immune enhancing purpose.

However, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to employ lutein as the antioxidants in Ito's method since Lutein is one of the eight disclosed species (column 5, line 17-20), and is one of

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the preferred species (table 1 in column 8). The employment of lutein is seen to be a selection from amongst equally suitable material and as such obvious. Ex parte Winters 11 USPQ 2nd 1387 (at 1388). Further the reduction of stress certainly enhance the immunity since stress is known to reduce the immunity. As to the amounts of lutein specified herein 1-50 mg/day, note a dog or cat feed 5 to 250 grams/day of the feed disclosed by Ito (contains 0.2% of antioxidants) would meet this limitation.

5. Claims 1, 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (US Patent 5,937,790) in view of Jyonouchi et al. (IDS, March 22, 2002) in view of Anon (IDS, March 22, 2002), and Krinsky (IDS, March 22, 2002), and further in view of CRC Handbook of Toxicology (of record) for reasons set forth in the prior office action.

6. Ito et al. teach a animal feed comprising antioxidant selected from carotene and lutein etc. the antioxidant is in the concentration of about 0.02%. Ito further teaches method for reducing stress in animal comprising feeding the animal (including dog and cat) with the antioxidant agent. See, particularly, column 5, lines 16-20, and claims 8-16. Ito also teaches that the usefulness of carotenoids as food additive is for a broad range of animals including mammals and fish. See, particularly, column 6, lines 8-11. It is also known in the art that stress inducing reduction of immunity. Ito noted that domestic animals such as dogs and cats are inevitable subject to stress, because of the restricted living space (preventing from running off). See, column 1, lines 33-40.

7. Ito et al. does not teach expressly to choose lutein as the active ingredients, or particularly employ the lutein containing feed for immune enhancing purpose.

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8. However, Jyonouchi et al teaches that carotenoids in general, and lutein in particular, as antioxidants, are known to be useful in enhancing immune response animals. See the abstract, and the discussion. Anon teaches an ailment specific dietary supplements comprising lutein, which may be useful for enhancing immune response. See, the whole article. Krinsky teaches that it is well known that carotenoids have effect of immune enhancement in animals. See the abstract, and the summary. The CRC Handbook of Toxicology, 1995, at page 11 describes the fact that experimental animal models are known to be useful in condition that mimic human disease.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to employ Ito's feed with lutein as the antioxidant, to feed cat or dog for enhancing their immune systems.

A person of ordinary skill in the art would have been motivated to employ Ito's feed with lutein as the antioxidant, to feed cat or dog for enhancing their immune systems because lutein is known to be useful for enhancing the immune system of animals, and is known to be useful in dog or cat feed. As to the amounts of lutein specified herein 1-50 mg/day, note a dog or cat feed 5 to 250 grams/day of the feed disclosed by Ito (contains 0.2% of antioxidants) would meet this limitation.

Response to the Arguments

Applicants' amendments and remarks submitted December 6, 2004 have been fully considered. The amendments are persuasive to overcome the rejections under 35 U.S.C. 112s.

The rejections under 35 U.S.C. 103 as set forth above are maintained. No new arguments have been presented.

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9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang whose telephone number is (571) 272-0632. The examiner can normally be reached on Monday to Friday from 7:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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SHENGJUN WANG
PRIMARY EXAMINER

Shengjun Wang
Primary Examiner
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